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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DONTRELL BLINKS,

Defendant and Appellant.

F077677

(Super. Ct. No. BF160442A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael E. Dellostritto, Judge.

James Bisnow, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Peter H. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Detjen, Acting P.J., Smith, J. and Snauffer, J.

Defendant Dontrell Blinks contends on appeal that remand is required for the trial court to (1) consider whether to exercise its discretion, recently granted by Senate Bill No. 1393 (2017–2018 Reg. Sess.; SB 1393), to strike his two prior serious felony conviction enhancements, and (2) recalculate his custody credits. The People concede and we agree. Accordingly, we remand for these purposes, and affirm in all other respects.

BACKGROUND¹

On September 18, 2015, defendant was convicted by jury trial of possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1);² count 1); possession of ammunition by a felon (§ 30305, subd. (a)(1); count 2); gang participation (§ 186.22, subd. (a); count 3); and misdemeanor obstruction of a peace officer (§ 148, subd. (a)(1); count 4). In addition, the jury found true the allegations that defendant was armed with a deadly weapon (§§ 667, subd. (e)(2)(C)(iii), 1170.12, subd. (c)(2)(C)(iii)) in commission of count 1, and that he committed the offenses charged in counts 1 and 2 for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)).

In a bifurcated proceeding, the trial court found true allegations that defendant had suffered two prior felony convictions (in 2003 and 2012) within the meaning of the “Three Strikes” law (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d)), that those two convictions also constituted prior serious felony convictions (§ 667, subd. (a)), and that defendant had served three prior prison terms (§ 667.5, subd. (b)). The court subsequently struck the 2003 prior strike conviction and the three prior prison term enhancements.

On November 20, 2015, the trial court sentenced defendant to 20 years in prison on count 1, as follows: six years (three years doubled pursuant to the Three Strikes law),

¹ The facts are irrelevant to the issues raised on appeal.

² All statutory references are to the Penal Code.

plus four years for the gang enhancement, five years for the 2003 serious felony conviction enhancement, and five years for the 2012 serious felony conviction enhancement. The court imposed stayed terms on counts 2 and 3 (§ 654) and 180 concurrent days on count 4.

On March 1, 2018, this court reversed the gang participation conviction in count 3 and remanded for resentencing.

On June 19, 2018, on resentencing, the trial court again struck the 2003 prior strike conviction and the three prior prison term enhancements. The court sentenced defendant to 20 years in prison on count 1, as follows: six years (three years doubled pursuant to the Three Strikes law), plus four years for the gang enhancement, five years for the 2003 serious felony conviction enhancement, and five years for the 2012 serious felony conviction enhancement. The court imposed a stayed term on count 2 and 180 concurrent days on count 4. The court awarded 329 days of custody credits, stating: “[Defendant], at the time of our previous sentencing was entitled to credits and I will impose those same credits at this time with an order that the Department of Corrections & Rehabilitation will calculate the appropriate credits thereafter”

On June 20, 2018, defendant filed a notice of appeal.

DISCUSSION

I. SB 1393

When defendant was both sentenced and resentenced, the trial court had no power to strike a prior serious felony conviction enhancement imposed pursuant to section 667, subdivision (a). (See former § 1385, subds. (b), (c)(2), Stats. 2014, ch. 137, § 1.) Effective January 1, 2019, however, SB 1393 amended sections 667 and 1385 to provide trial courts discretion to strike prior serious felony conviction enhancements in the interest of justice. (Stats. 2018, ch. 1013, §§ 1, 2.) We agree with the parties that the new law applies retroactively to defendant because his appeal was not yet final on the

law's effective date, (*People v. Garcia* (2018) 28 Cal.App.5th 961, 973), and we accept the People's concession to remand the case for the trial court to consider whether to exercise its newly granted discretion.

II. Custody Credits

We also agree with the parties that the trial court had the responsibility to recalculate custody credits on remand. (*People v. Buckhalter* (2001) 26 Cal.4th 20, 40–41.)

DISPOSITION

The matter is remanded for the trial court to (1) consider whether to exercise its discretion to strike the prior serious felony conviction enhancement (Pen. Code, § 667, subd. (a)), and (2) recalculate defendant's custody credits. The trial court is directed to prepare an amended abstract of judgment and forward a certified copy to the appropriate entities. In all other respects, the judgment is affirmed.